90-1553

(1)

Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

GENE FLINN,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

First, is an attorney subject to disbarment proceedings, whose alleged professional incompetence was one of the bases for disciplinary action, entitled to appointment of either a guardian *ad litem* or court-appointed counsel if the professional incompetence is the result of mental incompetence?

Second, if the attorney subjected to disciplinary procedures is indigent, are disbarment proceedings sufficiently quasi-criminal in nature to require that counsel be appointed for him?

Third, even if disbarment proceedings are considered civil in nature, is an indigent attorney threatened with sanctions entitled to court-appointed counsel?

Finally, does procedural due process require that an attorney threatened with disciplinary action be given full and complete advance notice of the nature and source of the charges against him?

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NO. _____

IN THE

SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM, 1990

GENE FLINN,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO
THE SUPREME COURT OF FLORIDA

The petitioners respectfully pray that a Writ of Certiorari issue to review the final judgment of the Supreme

Court of Florida entered in the above-captioned proceeding on February 7, 1991.

OPINIONS BELOW

The February 7, 1991 opinion of the Supreme Court of Florida ordering that petitioner be disbarred effective March 11, 1991 has not yet been reported, but is reprinted in the appendix.

JURISDICTION

This Court has jurisdiction based upon constitutional questions under the Sixth and Fourteenth Amendments to the United States Constitution. This Petition for Writ of Certiorari is filed under the provisions of 28 U.S.C. 2101(c) and (d). The petition has been filed within the time allowed by law.

STATUTORY PROVISIONS

The relevant statutes or rules are as follows:

Amendment VI, United States Constitution:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his Defence.

Amendment XIV, United States Constitution:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law. . . .

Florida Integration Rule, Preamble, Section (b):

> (b) Attorneys admitted to practice law in Florida are a part of the judicial system of

Florida and officers of its courts.

American Bar Association, *Standards on Attorney Disciplinary Proceedings*, Sections 12.1 and 12.2:

> 12.1. Transfer to Disability Inactive Status. A lawyer whose mental or physical condition prevents him from competently representing the interest of his clients should be transferred to disability inactive status.

STATEMENT OF THE CASE

A complaint was filed by The Florida Bar against petitioner, Gene Flinn, an attorney admitted to practice law in the State of Florida, on August 23, 1988.* This complaint alleged, *inter alia.*, that Flinn was guilty of a variety of misconduct as shown in the complaint reproduced in the appendix at A-1. Generally, the charges involve alleged financial improprieties -- but not defalcation -- occurring in a medical malpractice case, and a series of allegations arising from Flinn's work on a number of Workmen's Compensation cases. The Compensation-based allegations basically were that a) Flinn had handled a number of cases in an incompetent manner; and b) that Flinn had through his dealings with certain Commissioners of Workmen's

* All parties to this proceeding are identified in the caption.

Compensation committed acts prejudicial to the administration of justice and that Flinn knowingly made false accusations against the Commissioners. Flinn, on the contrary, contended that these Commissioners had committed improper acts, including bribery and conspiracy, and that the charges brought by The Florida Bar were retaliatory in nature.

In accordance with Florida practice, this matter was filed in the Supreme Court of Florida under that Court's original jurisdiction, after the Florida Attorney Grievance Commission had determined that sufficient cause to pursue formal charges against Flinn existed.

After a hearing before a referee appointed by the Florida Supreme Court, Flinn was found guilty of six of the seven counts raised against him. In addition to the specific disciplinary charges raised in

the original complaint, the referee added a finding that Flinn had engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, pursuant to Rule 4-8.4(c), Rules Regulating The Florida Bar, although no such charge had been raised in the original complaint. Flinn was, however, found not guilty of one count on the basis of insufficient evidence.

During the course of hearings, which lasted six days, petitioner Flinn requested that the court appoint counsel for him, since he had exhausted his financial resources and was indigent. The request for appointed counsel was denied without comment. Later, Flinn repeated his motion for appointed counsel in writing to the Supreme Court of Florida. This later motion emphasized that Flinn had exhausted his financial resources through time devoted to attempting to defend himself in these

proceedings as well as by having his pending cases continued throughout the course of these proceedings; since Flinn is primarily a plaintiff's lawyer, delays in adjudication directly affect his income when it is largely on a contingent fee basis. This second motion was also denied.

Ultimately, the referee recommended disbarment, and the referee's recommendations were adopted by the Supreme Court of Florida virtually verbatim. The text of the disbarment opinion is reproduced in the appendix at page A-8.

During the course of these proceedings, as set forth at various points in the argument portion of this petition, Flinn engaged in behavior which the referee characterized as "bizarre". In addition, the foundation for one of the complaints against him was that he suffered from "organic brain syndrome". A portion of the relevant

testimony is reproduced in the appendix, at page A-7. Although there was conflicting evidence in the record as to the nature of any psychiatric impairment, if any, the Florida Supreme Court did not undertake any independent medical evaluation, and did not appoint a guardian *ad litem* or counsel for Flinn. He was permitted to attempt to defend himself in the disbarment proceedings even in the face of specific allegations of irrationality and bizarre behavior both in the Bar complaint against him as well as during the course of disciplinary proceedings.

On February 7, 1991 the Supreme Court of Florida issued its opinion ordering Flinn's disbarment. Although Flinn filed a number of post-trial motions, none of them are specifically in the nature of a motion for rehearing. None of these post-trial motions were granted. The Supreme Court

of Florida opinion resulted in Flinn's disbarment effective March 11, 1991.

REASONS FOR GRANTING THE WRIT

Every lawyer has heard, and most would agree with, the old saying that "the man who pleads his own case has a fool for a client".* Flinn, the petitioner, also agreed. But the theory underlying this well-known adage is problematic when litigation has brought financial ruin upon a man. That is why Flinn asked for court-appointed counsel. And in a case involving quasi-criminal charges as serious as those made against Flinn, the Constitution requires that counsel be appointed.

I. COURT-APPOINTED COUNSEL WAS NECESSARY AS A MATTER OF CONSTITUTIONAL LAW.

A. Allegations of emotional instability require the appointment of counsel to protect the rights of the accused.

* Footnote to *Oxford English Dictionary*, citing Harlan, George C., "Eyesight and How to Care for It" (1879) as the earliest recorded version of this epigram.

Petitioner contends that the Florida Bar cannot selectively find him mentally competent for some purposes and not competent for others. At various points in the record, Flinn's actions were described as "bizarre". One of the complainants, Dr. Stillman, a forensic psychiatrist, filed a complaint with the Florida Bar alleging that Flinn suffered from "organic brain syndrome". The Florida Bar and the Supreme Court of Florida explicitly accepted these characterizations of Flinn's capacity, yet proceeded as if they had not found his competency questionable.

Throughout the record produced in the course of the disciplinary proceedings appear charges by Flinn, made *pro se*, of serious misconduct on the part of several of the complainants. The allegations made by Flinn cover a wide range of activities, including fraudulent and illegal acts by

various attorneys involved in this matter and members of the judiciary. The referee, on the other hand, found "not a scintilla" of evidence to support these allegations. On the one hand, Flinn had made serious complaints that on their face appear to warrant further investigation. However, the referee dismissed these complaints as wholly incredible.

There exists, accordingly, a sharp conflict between what Flinn obviously believed to be true and what the referee found. Dr. Stillman, a forensic psychiatrist and one of the complainants against Flinn, testified that Flinn suffered from "organic brain syndrome" which allegedly led to Flinn's belief that a conspiracy existed. Given the severity and source of these allegations of mental illness, petitioner contends that as a matter of law, and *sua sponte*, the Florida Supreme Court was

obligated to appoint counsel for petitioner, or in the alternative, a guardian *ad litem* to assist respondent in his defense. This requirement is one of fundamental due process under the Fourteenth Amendment to the Constitution.

Florida law requires in criminal cases that a competency hearing shall be held whenever it reasonably appears necessary, to ensure that a defendant meets the minimum standard of competency, Section 918.15, Fla. Stat (1979); *Scott* v. *State,* 420 So.2d 595 (Fla., 1982). A separate, federal Constitutional procedural due process right to a competency hearing exists whenever the facts or events presented to the trial court raise a bona fide doubt as to the defendant's competency, *Pate* v. *Robinson*, 383 U.S. 375, 86 S.Ct. 836, 15 L.Ed.2d 815 (1966), *Reese* v. *Wainright*, 600 F.2d 1085 (5th Cir, Fla., 1979). This

Court outlined the following three criteria for determining whether a violation of due process has occurred: 1) the existence of any history of irrational behavior; 2) the defendant's demeanor at trial; and 3) prior medical opinion, *Drope* v. *Missouri*, 420 U.S. 162, 180, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975); *Van Poyck* v. *Wainright*, 595 U.S. 1083 (5th Cir, Fla., 1979).

Assuming, *arguendo*, that the same standards applicable to a criminal prosecution apply to this attorney disciplinary proceeding, clearly the Supreme Court of Florida based upon the facts found by its referee and adopted in its opinion should have made a formal inquiry as to Flinn's mental competence. The threshhold issue of prior irrational behavior is illustrated by the complaints themselves; several of the complainants expressly base

their concerns upon allegations of irrational and incompetent behavior by Flinn.

Further, the defendant's behavior at the trial of this cause was characterized by the referee as follows:

> "This trial could have been completed in two days. However, due to Flinn's bungling, rambling, repeatedly asking the same irrelevant questions and spending an inordinate amount of time trying to introduce volumes of improper materials as evidence, the final hearing took six days to complete."

Referee's report, appendix at A-16.

Finally, medical evidence was presented both to the Attorney Grievance Commission and to the referee which raised the possibility that Flinn could be suffering from a psychiatric condition prior to the filing of charges by Bar Counsel against him.

Despite the sharp dichotomy between Mr. Flinn's belief in his allegations of severe misconduct by certain Commissioners of Workmen's Compensation, and the total disregard shown for these allegations by the Florida authorities, no attempt at a full and complete competency review was ever made. The only psychiatric testimony appearing in the record is that of 1) Dr. Stillman, one of the complainants, and 2) a Dr. Garcia, who conducted an examination at Flinn's request.

Dr. Stillman, a forensic psychiatrist, testified that respondent suffered from "organic brain syndrome" and that this disorder was probably due to alcohol abuse. Reading from his testimony, it would appear that respondent was a severely ill man, unable to attend to the duties of a law practice.

Dr. Garcia examined respondent *only* to address the issues raised by Dr. Stillman. Although he did not find any organic brain disorder or impairment, it is notable that he did not undertake any personality or behavioral evaluation whatsoever. This is particularly notable in light of the behavioral nature of the bulk of the allegations made against Flinn.

Under Florida and 11th Circuit criminal law, the issue of whether a competency hearing should have been held is separate and distinct from a defendant's competency to stand trial, *Fullada* v. *Dugges*, 819 F.2d 1564 (11th Cir., 1987). Once a "bona fide doubt" as to a person's competency has been raised, under *Pate* and *Drope*, the Court must *sua sponte* conduct a hearing on his competence to stand trial, *Hance* v. *Zant*, 696 F.2d 940 (11th Cir.,

1983), *cert. den.*, 463 U.S. 1210, 103 S.Ct. 3544, 77 L.Ed.2d 1393 (1983); *Scarborough* v. *U.S.*, 683 F.2d 1323, 1324 (11th Cir., 1982), *reh'g. den.*, 690 F.2d 907 (1982), *cert. den.*, 459 U.S. 1220, 103 S.Ct. 1225, 75 L.Ed.2d. 460 (1983). The failure of the Florida Supreme Court to do so is a violation of Flinn's due process rights.

B. The Federal Constitution requires that the right to a competency hearing in criminal proceedings be extended to quasi-criminal proceedings, including attorney disciplinary proceedings.

Petitioner contends that the same types of protection afforded to criminal defendants must be extended to him in this quasi-criminal proceeding. That is, a hearing *sua sponte* by the Court with a right to court-appointed counsel to protect his interests was Constutionally required.

This Court, in *Theard* v. *U.S.*, 354 U.S. 278, 77 S.Ct. 1274, 1 L.Ed.2d 1342

(1957), declined to disbar an attorney because of an offense committed 18 years prior to disbarment proceedings while the attorney was "suffering under an exceedingly abnormal mental condition, some degree of insanity," 354 U.S. at 278.

In some States, a guardian ad litem or other legal representative is appointed to assist an attorney charged with mental incompetence or other emotional or mental illness which has led to disciplinary action. See, e.g., *In re Chipley*, 176 S.E.2d 412 (S.C., 1970).

The allegations of instability and other mental deficiency interact with most of the specific charges sustained by the Supreme Court of Florida. In particular, Counts V, VI, and VII of the charges against petitioner specifically address his "incompetency" and unfounded allegations

of bribery and misconduct against certain Deputy Commissioners of Workmen's Compensation. In particular, the referee as well as Bar Counsel failed to distinguish between professional incompetence and mental incompetence.

The referee, in making his recommendations with respect to Count V of the complaint, stated as follows:

> Throughout these proceedings, Flinn created unnecessary delays, by asking repeated irrelevant and immaterial questions, by rambling on and on, without any valid reason and by alleging that there is a conspiracy to kill him. . . . *If this were a criminal proceeding and Flinn were counsel for the accused, and if he would have represented the accused in the same manner that he represented himself, the case would be set aside for ineffective assistance of counsel.* This trial could have been completed within two

> days. However, due to Flinn's bungling, rambling, repeatedly asking the same irrelevant questions and spending an inordinate amount of time trying to introduce volumes of improper materials as evidence, the final hearings took six days to complete. [emphasis supplied]

The facts found sufficient by the Florida Supreme Court to sustain the referee's rulings include facts which could suggest professional incompetence, but which could also support an inference of personal, mental incompetence - "rambling on and on", "conspiracy to kill him", and the like. The referee at p. 7 of the report concludes that petitioner's behavior was "bizarre".

Petitioner contends that the behavior found by the referee required appointment of counsel and/or a guardian ad

litem, and a formal pre-hearing competency hearing.

The American Bar Association, as well as many state courts, carefully distinguish between incapacity and willful misconduct. The ABA's *Standards on Attorney Disciplinary Proceedings*, at Section 12.1, indicates that this distinction is particularly important in considering the sanctions to be administered.

> If. . . an attorney's mental incompetence renders him unable to form the intent that is an element of the offenses charged, then he should not be disciplined for the offenses, but should be prohibited from practicing law during the continuance of his mental incompetence. The appropriate remedy is not disbarment or suspension, but enrollment as an inactive member of the Bar, with the opportunity of becoming an active member upon a determination that

mental competence has been restored.

Hyland v. *State Bar*, 59 Cal.2d 765, 31 Cal.Rptr. 329, 334 (1963).

The referee, and by adoption, the Supreme Court of Florida, fail to make the essential finding of willfulness necessary to exclude mental incapacity as the foundation of petitoner's alleged incompetence.

II. PETITIONER HAS A RIGHT TO COURT-APPOINTED COUNSEL BOTH UNDER THE SIXTH AMENDMENT AND THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION.

Petitioner contends that as a matter of constitutional law, he had a right to court-appointed counsel to defend him in these disciplinary proceedings. He properly and timely requested such counsel early on in the process, before the referee; the

request was summarily denied. The request was subsequently repeated by formal written motion to the Supreme Court of Florida, and again was denied.

Petitioner believes that this denial of counsel was in violation of his rights under Amendment VI of the Constitution, as made applicable to the States under Amendment XIV of the Constitution by *Gideon* v. *Wainright*, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). Alternatively, if he is not entitled to counsel under Amendment VI to the Constitution, nevertheless petitioner contends that he has a general due process right to counsel under the Fourteenth Amendment.

A. The attorney disciplinary proceeding, if quasi-criminal in nature, requires appointment of counsel for an indigent if requested.

The constitutional right to counsel is guaranteed in criminal

prosecution by Amendment VI of the U.S. Constitution, *Kirby* v. *Illinois*, 406 U.S. 682, 92 S.Ct. 1877, 32 L.Ed.2d 411 (1972); *U.S.* v. *Mandujano*, 425 U.S. 564, 96 S.Ct. 1768, 48 L.Ed.2d 212 (1976). Although the specific language of the Sixth Amendment does not per se extend beyond criminal prosecutions, nevertheless petitioner contends that the proceeding here is in the nature of quasi-criminal prosecution and that the cases and a careful interpretation of the Sixth Amendment would require appointed counsel in these circumstances.

The distinction between the criminal and civil processes has been stated as follows:

> "In a criminal trial, the State is represented by a prosecutor; formal rules of evidence are in force; a defendant enjoys a number of procedural rights which may be lost if not timely raised . . . "

Gagnon v. *Scarpelli,* 411 U.S. 778, 788-789 (1973). All of the *Gagnon* factors are present here; the State was represented by a prosecutorial Bar Counsel; formal rules of evidence, jurisdiction, venue, and the like were applicable; and the Florida Supreme Court ruled that Flinn had actually lost certain rights for failure to raise them at trial, opinion at Appendix, A-10.

A case in which this Court analyzed the criminal/non-criminal distinction was *Middendorf* v. *Henry*, 425 U.S. 25, 96 S.Ct. 1281, 47 L.Ed.2d 556 (1976). In *Middendorf,* the Court addressed the issue of whether a military summary court-martial proceeding was a criminal proceeding for Sixth Amendment purposes. In finding that such proceedings were not "criminal" in the civilian sense of the word, the Court found

> Here, for example, most of the plaintiffs were charged solely with "unauthorized absence," an offense which has no common-law counterpart and which carries little popular opprobrium. Conviction of such an offense would likely have no consequences for the accused beyond the immediate punishment meted out by the military, unlike conviction for such civilian misdemeanors as vagrancy or larceny which could carry a stamp of "bad character" with conviction.

Middendorf v. *Henry*, 425 U.S. at 39.

Other than outright conviction for a felony, it is difficult to conceive of a charge that would carry more consequences for an attorney than a charge of "incompetence", or a charge of engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. These charges directly carry a stamp of "bad character" and consequently "bad attorney" on an accused.

Petitioner believes that cases involving other professionals can be distinguished due to the uniquely punitive nature of attorney disciplinary proceedings.

In *Bancroft* v. *Board of Governors of Registered Dentists of Oklahoma*, 210 P.2d 666, (Okla., 1949), a dentist whose license was revoked for misconduct involving moral turpitude claimed he was entitled to appointed counsel. The claim was denied on the ground that it was not a criminal prosecution and no duty to appoint counsel existed, 210 P.2d at 668. Similarly, in a case dealing with real estate sales persons, *Borror* v. *Department of Investment Division of Real Estate*, 92 Cal.Rptr. 525, 15 Cal.App.3d. 53 (1971), appointed counsel was denied because California law did not consider such procedures to be criminal in nature.

In both *Bancroft* and *Borror*, the purpose of the proceedings under which these persons were disciplined was stated to be purely for the protection of the public. This Court, however, has found that attorney disciplinary proceedings have a punitive element which distinguishes them from licensing and disciplinary proceedings against other professionals, *In re Ruffalo*, 390 U.S. 544, 550, 88 S.Ct. 1222, 58 L.Ed.2d 717 (1968).

It is this punitive aspect of disbarment which makes these proceedings sufficiently criminal in nature to require extension of Sixth Amendment rights to defendant. Accordingly, his request for court-appointed counsel should not have been summarily denied.

B. The circumstances herein meet the three-prong test of *Lassiter* requiring appointment of counsel even if this proceeding is considered civil in nature.

This Court, in *Lassiter* v. *Department of Social Services*, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981), held that a presumption against appointment of counsel exists when an unsuccessful litigant cannot be deprived of his personal liberty. However, this presumption can be overcome and appointment of counsel is required after weighing three factors: 1) the private interests at stake; 2) the government's interest; and 3) the risk that the procedure used will lead to erroneous results. When the litigant's interests are at their strongest, the state's interest at its weakest, and the risks of error at their peak , the presumption will be overcome and appointment of counsel required, *Lassiter* v. *Department of Social Services*, 452 U.S. at 31, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981). This has been described as a

due process right to counsel arising from the Fourteenth Amendment, *Lassiter, supra.*

The common thread running through the non-criminal cases in which a due process right to appointed counsel has been found is that an individual has been confronted with the full array of resources available to the State, leaving him at a substantial disadvantage. For instance, counsel is required at juvenile hearings even though they are expressly non-criminal in nature, *In re Gault,* 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967), as well as in proceedings for termination of parental right, *Lassiter, supra.* The Florida Supreme Court has stated that the right to counsel in other juvenile dependency proceedings may attach on a case-by-case basis, *In interest of D.B.*, 385 So.2d 83 (Fla., 1980). Counsel has not been required in divorce proceedings, *Kiddie* v.

Kiddie, 563 P.2d 139 (Okla., 1977) and local draft board proceedings, *U.S.* v. *Sturgis*, 342 F.2d 328 (3rd Cir., 1965). The division appears to be that where the State is pursuing the procedure, a due process right to counsel attaches, *In re Ella B.*, 30 N.Y.2d 352, 334 N.Y.S.2d 133, 25 N.E.2d 288 (1972).

Florida has an integrated bar and The Florida Bar is accordingly a branch of the judiciary. Actions by Bar Counsel are therefore direct acts of the State, through one of its agencies. Flinn contends, therefore, that the State was actually conducting the disciplinary proceedings against him, and he is therefore entitled to appointed counsel.

III. PROCEDURAL DUE PROCESS REQUIRES THAT AN ATTORNEY THREATENED WITH DISBARMENT RECEIVE ADEQUATE NOTICE OF THE NATURE OF THE CHARGES AGAINST HIM.

Disbarment, although designed to protect the public, is also a penalty imposed on the lawyer. Accordingly, an attorney charged with disbarment proceedings is entitled to procedural due process, which includes notice of the charges against him, *In re Ruffalo,* 390 U.S. 544, 550, 88 S.Ct. 1222, 20 L.Ed.2d. 874 (1968).

In *Ruffalo*, an amendment to charges against an attorney was made after the respondent attorney and his principal witness had testified. Such an amendment was found to be violative of procedural due process, in that the charges must be known when the proceedings commence, *In re Ruffalo*, 390 U.S. at 551, 88 S.Ct. 1222, 20 L.Ed.2d 874 (1968).

Here, as in *Ruffalo,* the charges were amended after the proceedings had commenced. By the referee's own

admission, although respondent was not specifically charged with violating Rule 4-8.4(c), Rules Regulating the Florida State Bar, the referee found that the evidence had indicated a violation of this provision, as follows:

> Although the respondent was not specifically charged with violating Rule 4-8.4(c), Rules Regulating The Florida Bar, the evidence elicited from Dr. Mitzner during cross-examination, plus other evidence, makes it clear and convincing, no, beyond any reasonable doubt, that the respondent violated Rule 4-8.4(c) of the Rules Regulating The Florida Bar. . . . Therefore, this was considered relevant to the discipline to be imposed.

Flinn contends that this alteration of the charges to fit the evidence produced is squarely in opposition to the procedural due process to which he is entitled.

The amendment here was made post-charge, post-testimony, in much the same manner as the charges were amended in *Ruffalo*. The ruling that Flinn violated Rule 4-8.4(c) accordingly was issued without sufficient notice to petitioner to enable him to prepare a defense. Because this particular violation, one involving fraud, deceit, and misrepresentation, is probably the most serious one which can be found against an attorney, the need for advance notice prior to imposition of sanctions is pronounced. When combined with the stated impact of the referee's findings on the sanctions to be imposed, it is imperative that sufficient advance notice be givenbefore proceeding.. Count II of the charges against petitioner was altered from a pre-hearing charge involving accounting problems to a charge involving

moral turpitude. The charge was material and significant.

Accordingly, the ruling must be reversed due to the post-hearing amendment in violation of *In re Ruffalo, supra*.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted, and the case remanded to the Supreme Court of Florida for rehearing with appointed counsel; or in the alternative, that the finding of a violation of Rule 4-8.4(c), Rules Regulating The Florida Bar, be set aside and the case remanded for hearing *de novo* after adequate notice has been given.

Respectfully submitted,

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FILING AND MAILING CERTIFICATE

I, Deborah A. Lawson, hereby certify that on this 8th day of April, 1991, I filed with the Clerk's Office of the United States the foregoing Petition for a Writ of Certiorari and further certify that I mailed this same date the required copies to the opposing counsel listed below:

Paul A. Gross, Esquire
Bar Counsel
The Florida Bar
Suite M-100, Rivergate Plaza
Miami, Florida 33131

John F. Harkness, Jr., Esquire
Executive Director
The Florida Bar
Tallahassee, Florida 32399-2300

John T. Berry
Staff Counsel
The Florida Bar
Tallahassee, Florida 32399-2300

Deborah A. Lawson

APPENDIX

Complaint filed by The Florida Bar, Complainant, v. Gene Flinn, Respondent, The Florida Bar File Nos. 87-24,978(III) and 87-24,956(III):

THE FLORIDA BAR, COMPLAINANT, files this Complaint against Gene Flinn, Respondent, pursuant to Chapter 3, Rules Regulating The Florida Bar, and article XI of the Integration Rule of The Florida Bar and alleges the following:

IN GENERAL: 1. That Respondent is, and at all times hereinafter mentioned was a member of The Florida Bar, subject to the jurisdiction and disciplinary rules of the Supreme Court of Florida.

COUNT I (The Florida Bar File No. 87-24,978(III))

2. That Respondent was representing Mattie Bohannon (hereinafter referred to as "Bohannon") in the filing of a claims bill before the Florida Legislature.

3. That Respondent employed Robert Levy, a lobbyist, to help in the filing of such claims bill for the 1987 Florida Legislative session.

4. That on or about November 1, 1986, Respondent entered into an agreement to represent, executed between Robert M. Levy and Associates and the Law Office of Gene Flinn, P.A., acting in behalf of Bohannon.

5. That on or about January 21, 1987, Respondent was sent, by certified mail, a letter stating that Bohannon was terminating Respondent's representation of her in such claims bill.

6. That the certified letter was returned by the post office and marked, "refused".

7. That on or about January 24, 1987, Respondent's co-counsel in the Bohannon matter, Ronald L. Buschbom, who had also been discharged, corresponded to Respondent concerning their discharge in the Bohannon matter.

8. That on or about March 11, 1987, Respondent was informed by letter that he had been discharged by Bohannon.

9. That even though Respondent had been discharged as of January 21, 1987 and notified by various persons and communications, Respondent continued to hold himself out as Bohannon's attorney in the claims matter.

10. That Respondent failed to notify or inform Robert M. Levy, the lobbyist Respondent had retained on behalf of Bohannon, that Respondent had been discharged.

11. That, in fact, the lobbyist employed by Respondent filed a claims bill in the Florida House of Representatives on behalf of Bohannon, in or about March, 1987, after Respondent had been discharged.

12. That on or about May 12, 1987, Respondent sent correspondence on the Bohannon matter to his previous co-counsel, Ronald L. Buschbom, referring to "Our Claims Bill: HB1001."

13. That on or about May 15, 1987, Respondent contacted Special Master D. Stephen Kahn of The Florida Senate, offering his assistance in the presentation and handling of the claims bill submitted by Bohannon's attorney to the Senate.

14. That on or about May 18, 1987, Special Master Stephen Kahn asked for clarification as to who

Bohannon's attorney was and the need for one point of contact in the Bohannon claim.

15. That by reason of the foregoing, Respondent has violated Rule 4-1.16(a)(3) of the Rules Regulating The Florida Bar (a lawyer shall not represent a client or, where representation has commenced, shall withdraw from representation of a client if the lawyer is discharged).

COUNT II: 16. That on or about August 25, 1986, Respondent along with co-counsel, Ronald L. Buschbom, received $27,869.40 for costs incurred in the representation of Bohannon in the medical malpractice case of Mattie Bohannon, et al. vs. Public Health Trust, et al., case No. 81-11161(CA-16).

17. That on or about March 11, 1987, both Respondent and co-counsel Ronald L. Buschbom were requested to provide itemized statements of the $27,869.40 costs incurred in the case.

18. That on or about April 28, 1987, Respondent's co-counsel, Ronald L. Buschbom, provided a statement accounting for $8,169.40 of the costs.

19. That on or about April 27, 1987, Respondent was again requested to provide an itemized statement of costs.

20. That although Respondent's co-counsel, Ronald L. Buschbom, provided such itemized statement, Respondent has failed to provide a proper accounting as to the $19,700.00 in unaccounted costs.

21. That by reason of the foregoing, Respondent has violated Disciplinary Rule 9-102(B)(3) (lawyer shall maintain complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them) and Disciplinary Rule 2-106(E) (attorney shall prepare a c losing statement reflecting an itemization of all costs and

expenses, together with the amount of fee received by each participating attorney or law firm) of the Code of Professional Responsibility and Rule 4-1.5(d)(5) (fee) and Rule 5-1.1 (trust accounts) of the Rules Regulating The Florida Bar.

COUNT III: 22. That at the grievance committee hearing held on March 22, 1988 Respondent offered into evidence a copy of an affidavit dated April 26, 1985 and signed by Mattie and William Bohannon. . .

23. That added to the body of the affidavit were the words "and employ Gene Flinn and Bob Levy, exclusively, to pursue a claims bill to conclusion."

24. That the above stated words were in a different "type" than the rest of the affidavit.

25. That as of April 26, 1985, Bohannon did not know Bob Levy or who Bob Levy was.

26. That when the Bohannons signed the affidavit on April 26, 1985, such words were not included in the affidavit.

27. That, in fact, Respondent did not retain the services of Bob Levy until on or about November 1, 1986.

28. That Respondent improperly altered or caused to have altered the affidavit to include the above stated words in Paragraph 24, some time after the Bohannons signed the affidavit on April 26, 1985 and before it was presented and offered into evidence to the grievance committee on March 26, 1988.

29. That by reason of the foregoing, Respondent has violated Rule 4-8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) of the Rules Regulating The Florida Bar and Disciplinary Rule 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation) of the Code of Professional Responsibility.

COUNT IV: 30. That at the grievance committee hearing held on March 22, 1988, Respondent offered into evidence a typed statement dated August 19, 1987, signed by Bohannon, saying in part that, "It is my desire any pending complaints against Mr. Flinn be dismissed.". . .

31. That on August 19, 1987, the same date that Bohannon signed the above mentioned statement, a check for $150.00 was issued to Bohannon from Respondent's law office account. . . .

32. That Bohannon was paid such $150.00 in exchange for or as inducement for her signing the above-mentioned statement.

33. That by reason of the foregoing, Respondent has violated Rule 4-8.4(d) of the Rules Regulating The Florida Bar (conduct prejudicial to the administration of justice).

COUNT V: 34. That Respondent represented claimants in proceedings before the Department of Labor and Employment Security, Division of Worker's Compensation (hereinafter referred to as "Worker's Compensation").

35. That one such claimant was Marie Nieto (hereinafter referred to as "Nieto"), who suffered a compensable injury on October 29, 1982 along with a subsequent non-compensable injury on June 13, 1983.

36. That on or about July 16, 1986, Deputy Commissioner, John G. Tomlinson, Jr., denied all claims submitted by Respondent on behalf of Nieto . . . .

37. That Deputy Commissioner John G. Tomlinson, Jr. noted in his order denying such benefits that Nieto may have been entitled to certain benefits under the claims submitted if Respondent had offered evidence or produced testimony showing which

symptoms were related to which accident so an award of benefits could have been apportioned between the two accidents. . . .

38. That Respondent failed to offer such evidence, instead presenting immaterial and irrelevant evidence, taking multiple hearings to do what could have been and should have been done in one hearing.

39. That another claimant represented by Respondent was Timothy Moore.

40. That on or about August 1, 1986, Marion Moore, Claimant's mother, wrote a letter to Deputy Commissioner John G. Tomlinson, Jr., voicing her dissatisfaction with Respondent and stating in part: "I should contact Mr. Flinn, that's a joke. I could have argued the case better than him."

41. That between 1986 and 1987 while Respondent was campaigning for political office, Respondent appeared before the Deputy Commissioners of District K, repeatedly, inadequately prepared to present his client's case.

42. That such inadequate representation included Respondent's failure to ask proper questions and present evidence in support of his client's claim, failure of Respondent to address the issues and to give responsive answers to questions posed, instead presenting immaterial, and irrelevant evidence, taking multiple hearings to do what should have been done at one hearing.

43. That Respondent's inadequate representation of his clients placed the Deputy Commissioners in the position of having to try his cases for him, acting as advocates rather than impartial judges.

44. That in or about July, 1986, the Deputy Commissioners of District K had a meeting with Respondent advising Respondent that the Deputy

Commissioners felt he was not adequately representing his clients and that it would be a disservice to the public for Respondent to continue to represent clients without co-counsel.

45. That subsequent to such meeting, Respondent appeared on behalf of claimant, Edward Lester, without co-counsel.

46. That on or about August 5, 1986, the Deputy Commissioners of District K entered Orders of Recusal on those cases in which Respondent represented claimants. . . .

47. That by reason of the foregoing, Respondent has violated Disciplinary Rules 1-102(A)(6) (conduct that adversely reflects on his fitness to practice law); 6-101(A)(2) (handling a legal matter without preparation adequate in the circumstances); and 6-101(A)(3) (neglect) of the Code of Professional Responsibility.

COUNT VI: 48. That Respondent was representing claimant Frank Chambers before Deputy Commissioner Judith S. Nelson, with final hearing set for 10:30 a.m. on May 22, 1987.

49. That Respondent, instead of appearing at the final hearing on May 22, 1987, left an affidavit executed by Chambers on Deputy Commissioner Judith Nelson's desk stating that Chambers could not receive fair and unbiased hearings due to the partiality and prejudice manifested by Deputy Commissioner Nelson.

50. That such bare affidavit, without attachments and without any ore tunus motion or argument, did not meet the statutory and procedural requirements for being considered a Motion for Recusal and sufficient to rule upon.

51. That in order to protect and preserve the rights of all parties, Deputy Commissioner Judith Nelson continued the hearing to June 23, 1987 and

advised Respondent to file his Motion for Recusal in compliance with the applicable statute and rules regarding disqualification, informing Respondent which rules were applicable.

52. That on or about June 23, 1987, Respondent still had failed to submit a Motion for Recusal which met statutory and procedural requirements, requiring Deputy Commissioner Nelson to again reset such hearing for July 23, 1987.

53. That by reason of the foregoing, Respondent has violated Rule 4-1.1 (competence) of the Rules Regulating The Florida Bar.

COUNT VII: 54. That on or about August 18, 1986, Respondent filed a Notice of Appeal with the District Court of Appeals, First District of Florida, appealing the Deputy Commissioners Recusal Orders of August 5, 1986 and as grounds stated "bribery/corruption inter alia". . .

55. That on or about September 4, 1986, Respondent voluntarily withdrew his appeal.

56. That by reason of the foregoing, Respondent has violated Disciplinary Rule 8-102(B) (lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer) of the Rules of Professional Responsibility.

WHEREFORE, The Florida Bar respectfully requests that Respondent be appropriately disciplined.

• • •

PORTIONS OF DEPOSITION OF DR. ARTHUR T. STILLMAN, June 7, 1989:

[beginning on p. 15]

Q. . . .'Dr. Stillman advised that he had been called upon on various occasions to serve as an expert

witness on behalf of Attorney Gene Flinn.' Is that correct?

A. That's right.

Q. It continues:"During the course of his professional interaction with Mr. Flinn, Dr. Stillman advised that he had developed the professional opinion that Mr. Flinn demonstrated many of the outward symptoms associated with organic brain damage incident to acute alcoholism". Do you have any comments concerning that?

A. I can't say specifically acute alcoholism, but those are symptoms that do occur in that condition, as well as other conditions.

Q. But it could be other conditions?

A. Yes. It could be drugs, it could be a toxic process, it could be a sickness -- it could be a lot of things.

I merely mentioned alcoholism, I think, as an example of the toxicity. It seemed to me that there were symptoms or signs suggestive of some organic type symptomatology.

* * *

TEXT OF THE RULING OF THE SUPREME COURT OF FLORIDA, NO. 72-934, February 7, 1991:

PER CURIAM.

This is a lawyer disciplinary proceeding in which the respondent, Gene Flinn, petitions for review of the referee's findings of fact and his recommendation of disbarment. We have jurisdiction. Art. V, Sect. 15, Fla. Const. We approve the referee's findings, and we determine that disbarment is the appropriate discipline in this case.

The seven-count complaint against Flinn charged him with acts which occurred before January 1, 1987, in violation of the Disciplinary Rules of the Code of Professional Conduct, and acts which occurred after January 1, 1987, in violation of the rules Regulating The Florida Bar, adopted effective January 1, 1987. See The Florida bar re Rules Regulating The Florida Bar, 494 So.2d 977 (Fla., 1986).

These incidents occurred in Dade County, and a Dade County grievance committee made appropriate findings of probable cause. A judicial officer in Broward County was appointed as referee to hear this cause, and the final hearing before the referee was held in Broward County. The respondent challenges the venue of that hearing. We agree with the referee that, under the record and the circumstances of this cause, the respondent waived his claim of improper venue.

The following are the findings of fact and recommendations of guilt as articulated by the referee in addressing each of the seven counts in this complaint.

As to Count I, the referee found:

> Mr. Gene Flinn was representing Mrs. Mattie Bohannon in the filing of a claims bill before the Florida legislature for the 1987 Florida legislative session. Although Mr. Flinn had been informed by Mrs. Bohannon and her lawyer, Steven Hall, and Ronald Buschbom (co-counsel with Mr. Flinn) that he had been discharged as counsel in the claims matter, Mr. Flinn continued to hold himself out as Mr. and Mrs. Bohannon's attorney in the claims matter and continued to interfere in the claims bill.

Consistent with this finding, the referee recommended that Flinn be found

guilty of violating Rule 4-1.16(a)(3) of The Rules Regulating The Florida Bar, to wit: lawyer shall not represent a client or, where representation has commenced, shall withdraw from representation of a client, if the lawyer is discharged.

As to Count II, the referee found that

on or about August 25, 1986, Mr. Flinn and his co-counsel received $27,869.40 for costs in a medical malpractice case. During March and April, 1987, Mr. Flinn was requested to provide an itemized statement for his portion of the costs, which was $19,700. However, Mr. Flinn failed to provide a timely or accurate accounting.

Mr. Flinn called a Dr. Ira Mitzner as one of his witnesses. During questioning of Dr. Mitzner, it was established that Dr. Mitzner is a chiropractor and he never treated Edwin Bohannon. However, he submitted a statement dated March 25, 1988, years after the services were allegedly performed, which shows that he charged several thousand dollars for reviewing Edwin Bohannon's medical records and for consultation fees. Dr. Mitzner testified that he was going through a nasty divorce at the time and he asked Mr. Flinn to pay him in cash (presumably to hide his assets from his wife and from the judge handling his divorce). Mr. Flinn allegedly paid Dr. Mitzner in cash.

The doctor also testified that the baby (who was the victim in a medical malpractice case) had a perforated large bowel and small bowel. Mr. Buschbom testified that Edwin Bohannon was a

premature baby and had developed Necrosis Enteritis, which causes the intestines to die. It's a disease of infants.

The accounting submitted by Mr. Flinn shows that he incurred $3,000 in costs for payment to Dr. Mitzner. Neither Dr. Mitzner nor Mr. Flinn presented any record of the number of hours allegedly spent or on what days the records were allegedly reviewed or when the money was paid.

Ronald Buschbom testified, and I believe, that it was impossible for Dr. Mitzner to have done anything beneficial to the Plaintiff in the medical malpractice case. Mr. Buschbom testified that he had all of the medical records and Dr. Mitzner never reviewed them. In addition, he stated, according to Florida Statute 768.45, Medical Neglect Standards of Recovery, Dr. Mitzner could not testify in the medical malpractice case, as only a medical doctor experienced in treating babies would be qualified to testify and Dr. Mitzner is a chiropractor. Moreover, Dr. Mitzner was not listed on the pre-trial catalog, which Flinn prepared.

Based upon the evidence, it is clear and convincing that Dr. Mitzner's statement for charges was false, his testimony was pure fabrication, and that Mr. Flinn's itemization of costs (at least as it concerned Dr. Mitzner) was also false.

(citations omitted)

Consistent with these findings, the referee recommended that Flinn be guilty of the following violations:

Disciplinary Rule 9-102(B)(3) of the Code of Professional Responsibility, to wit: a lawyer shall maintain complete records of all funds, securities and other properties of a client coming into [the] possession of the lawyer and render appropriate accounts to his client regarding them.

Disciplinary Rule 2-106(E), Code of Professional Responsibility, to wit: the attorney shall prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of fee received by each participating attorney;

Rule 4-1.5(f)(5), Rules Regulating The Florida Bar. Charging an illegal or clearly excessive fee;

Rule 5-1.1, Rules Regulating The Florida Bar, to wit: trust accounting rule.

The referee also stated:

Although the respondent was not specifically charged with violating Rule 4-8.4(c), Rules Regulating The Florida Bar, the evidence elicited from Dr. Mitzner during cross-examination, plus other evidence, makes it clear and convincing, no, beyond any reasonable doubt, that the respondent violated Rule 4-8.4(c) of the Rules Regulating The Florida Bar, to wit: engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Therefore, this was considered relevant to the discipline to be imposed. [citations omitted]

As to Count III, the referee found:

> At a grievance committee hearing on March 22, 1988, Mr. Flinn offered into evidence a copy of an affidavit dated April 26, 1985, signed by Mattie and William Bohannon. Added to the affidavit were the words, "and employ Gene Flinn and Bob Levy, exclusively, to pursue a claims bill to conclusion."
>
> While the evidence shows that the affidavit was signed by Mattie and William Bohannon, I find that the words described above were added to the affidavit by Mr. Flinn or at his instruction, without the prior knowledge or consent of Mattie or William Bohannon. On April 26, 1985, Mrs. Bohannon did not know Bob Levy. Also, on April 26, 1985, the date the above-mentioned affidavit was signed, the relationship between Mr. Flinn and Mr. Buschbom was very good and there was no reason for hiring a lobbyist at that time.
>
> [citations omitted.]

Consistent with these findings, the referee recommended that Flinn be found

> guilty of Rule [4.8-4(c)] of the Rules Regulating The Florida Bar and Disciplinary Rule 1-102(A)(4), Code of Professional Responsibility, to wit: conduct involving dishonesty, fraud, deceit or misrepresentation.

As to count IV, the Bar alleged that Mrs. Bohannon was paid $150 for signing a typed statement that it was her desire to dismiss any complaints against Flinn. The referee found that, although there was evidence tending to support this allegation, "the evidence concerning this matter was not clear and convincing," and the referee recommended that respondent be found not guilty of count IV.

As to Count V, the referee found:

Mr. Flinn represented Marie Nieto in a workers' compensation case before Judge John G. Tomlinson, Jr. During July 1986, Judge Tomlinson denied all claims. This result was due to the lack of preparation, neglect and incompetence of Mr. Flinn. During 1986, Mr. Flinn represented Timothy Moore before Judge Tomlinson. Although Mr. Moore's mother testified that the problems in the case were caused by Judge Tomlinson, Dr. Arthur T. Stillman, a psychiatrist, testified that it was the incompetent manner in which Mr. Flinn handled the Timothy Moore case that led him to notify The Florida Bar concerning Mr. Flinn's incompetence.

The evidence concerning Mr. Flinn's incompetence as an attorney was clear and convincing. While the complaint refers to Mr. Flinn's incompetence between 1986 and 1987, the evidence was not limited to that time frame. The evidence shows that Mr. Flinn repeatedly failed to properly prepare cases, failed to ask proper questions and to address proper issues, continued to ramble and to make little sense, which caused inordinate delays in proceedings.

The deposition of Dr. Stillman, 6/7/89, contains examples of Mr. Flinn's incompetence.

In addition, the credible testimony by attorneys Robert Gregory and Steven Kronenberg, clearly describe Mr. Flinn's incompetence in the area of worker's compensation law. Furthermore, the testimony of the following worker's compensation judges clearly and

convincingly establish Mr. Flinn's incompetence as an attorney to wit: John Tomlinson, Jr., William Johnson, Judith Nelson and Alan Kuker.

In addition to the testimony of the worker's compensation judges, and lawyers, my personal observations of Gene Flinn's incompetent manner in handling his own case, convinces me, clearly and convincingly that he is incompetent as a lawyer. The deficiencies pointed out by the worker's compensation judges and The Florida Bar witnesses were apparent in Mr. Flinn's handling of his case. Throughout these proceedings, Mr. Flinn created unnecessary delays, or showed general incompetence as follows: by asking repeated irrelevant and immaterial questions; by asking improper questions on direct and on cross; by rambling without any valid reason; by alleging that there is a conspiracy or many conspiracies against him; by retaining a lawyer and then insisting on taking his own depositions, rather than have the lawyer take them -- even after he agreed to let retained counsel act as lead attorney; by attempting to introduce volumes of irrelevant documents into evidence; by filing what can only be characterized as bizarre motions such as his motion to refer matters to a grand jury and motion to file a counter-claim against The Florida Bar; by filing a written closing argument that rambles and makes little sense; by filing motions for pre-trial conference after 4:00 p.m., two days before the November 18, 1988 scheduled trial date; and by filing irrelevant documents that do nothing but clutter the file.

If this were a criminal proceeding and Mr. Flinn were counsel for the accused,

> and if he would have represented the accused in the same manner that he represented himself, any conviction would have to be set aside for ineffective assistance of counsel. Due to Mr. Flinn's conduct, the final hearing took six days to complete.
>
> In part, because of the poor manner Mr. Flinn represented clients before the worker's compensation judges, they recused themselves from hearing his cases. Apparently, this act was unprecedented. Mr. Flinn called a number of very excellent witnesses to testify as to his competence. However, a careful review of their testimony shows that they do not practice worker's compensation cases before them or have not had any recent cases before them.
>
> [citations omitted]

Consistent with these findings, the referee recommended that Flinn be found

> guilty of the following violations of the Disciplinary Rules of the Code of Professional Responsibility: 1-102(A)(6) conduct that adversely reflects on his fitness to practice law; 6-101(A)(2) handling a legal matter without preparation adequate in the circumstances and 6-101(A)(3), neglect of a legal matter.
>
> Since there was clear and convincing evidence showing incompetence and lack of diligence after January 1, 1987, the effective date of the Rules Regulating The Florida Bar, I recommend the respondent also be found guilty of the following rules of the Rules Regulating The Florida Bar: Rule 4-1.1 and 4-1.3 [citations omitted].

As to Count VI, the referee found:

> The Respondent, Gene Flinn, again showed his incompetence, where he represented Frank Chambers before Deputy Commissioner now judge Judith S. Nelson. Instead of appearing at the final hearing, he left an affidavit executed by Mr. Chambers on Judge Nelson's desk stating that Mr. Chambers could not receive a fair and unbiased hearing due to the prejudice manifested by Deputy Commissioner Nelson. Mr. Chambers and Judge Nelson were at the hearing -- Mr. Flinn was not. Mr. Flinn apparently wanted to file a motion to recuse, but it was not legally sufficient, even after the Deputy Commissioner told him to follow the applicable statute and rules.
>
> In addition to three other Deputy Commissioners recusing themselves from hearing Gene Flinn's cases, Judith Nelson also recused herself from the Chambers case.
>
> In addition, Judge Nelson testified concerning Mr. Flinn's incompetence in worker's compensation matters. Moreover, I find that Mr. Flinn knowingly made false accusations against Judge Judith Nelson, accusing her of bribery.

Consistent with these findings, the referee recommended that Flinn be found

> guilty of Rule 4-1.1, Rules Regulating The Florida Bar, to wit: incompetence.
>
> In addition, there was clear and convincing evidence that respondent made false accusations against Judge Nelson. Therefore, for purposes of discipline, this should be considered. [citations omitted].

As to Count VII, the referee found

> by clear and convincing evidence that Mr. Flinn, falsely and knowingly accused the following Deputy Commissioners, (now known as judges) of bribery and corruption: Alan Kuker, John Tomlinson, Jr., William Johnson, Judith Nelson[.]
>
> In addition, see deposition of Gregg Marr, December 8, 1988 wherein the former Department of Law Enforcement agent testified that he contacted witnesses furnished by Mr. Flinn, but their information tended to refute Mr. Flinn's allegations. There was not one scintilla of evidence presented to support any allegation of bribery or corruption on the part of any worker's compensation judges.
>
> [citations omitted.]

Consistent with these findings, the referee recommended that Flinn

> be found guilty and specifically that he be found guilty of violating Disciplinary Rule 8-102(B), to wit: a lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.
>
> The evidence was clear and convincing that the respondent knowingly made false accusations against Deputy Commissioners Tomlinson, Kuker and Johnson.

In making his recommendation as to the discipline to be applied, the referee judiciously and thoughtfully approached the question of the appropriate discipline. He stated:

I recommend that Gene Flinn, the respondent be disbarred from the practice of law in Florida.

While I realize that disbarment should be used only in most serious cases, it is my view that the protection of the public requires that Gene Flinn be disbarred. I do not make this recommendation lightly. This case is my first experience with disciplinary procedures, either as a lawyer or as a judge. Believe; it or not, I have given thought to this case almost daily since November, 1988. It hurts to write negatively about an attorney, but it hurts more to think that conduct such as that demonstrated by Mr. Flinn can be tolerated.

I have considered Florida's Standards for Imposing Lawyer Sanctions, as follows:

Rule 4.11 - Disbarment is appropriate when a lawyer intentionally or knowingly converts client property, regardless of injury or potential injury.

Rule 4.51 - Disbarment is appropriate when a lawyer's course of conduct demonstrates that the lawyer does not understand the most fundamental legal doctrines or procedures and the lawyer's conduct causes injury or potential injury to a client.

Rule 6.21 - Disbarment is appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or

causes serious or potentially serious interference with a legal proceeding.

The respondent knowingly and falsely accused at least four worker's compensation judges of bribery or corruption. It is my opinion this was done for base motives. See the commentary under 'commentary' under Rule 6.21 of Florida's Standards for Imposing [Lawyer Sanctions]. Mr. Flinn's strategy, whenever he is facing difficulties, seems to be, yell conspiracy. He has claimed, in addition to the worker's compensation judges, that The Florida Bar, and several attorneys are all out to get him. This is based on nothing.

Rule 5.11(b) - Disbarment is appropriate when a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft.

We find the findings of fact of the referee are fully supported in this record by clear and convincing evidence. We are unable to add to the reasons articulated by the referee in explaining the appropriateness of the recommended discipline in this cause.

Accordingly, we hold that Gene Flinn is guilty of violating the disciplinary Rules of the Code of Professional Responsibility and the Rules Regulating The Florida Bar, as set forth by the referee. We direct that Gene Flinn shall be disbarred from the practice of law, and he is hereby enjoined and prohibited from the practice of law in this state, effective March 11, 1991, thereby giving him thirty days to close out his practice. Judgment for costs in the amount of $10,296.05 is hereby entered against Gene Flinn, for which sum let execution issue.

It is so ordered.

* * *